

1 previously?

2 A That's correct.

3 MR. HALL: Your Honor, at this point we'd like to  
4 move the admission of Mass Media Bureau Exhibit 15.

5 JUDGE CHACHKIN: Any objection?

6 MR. SHOOK: No objection.

7 JUDGE CHACHKIN: The exhibit is received.

8 (The document referred to,  
9 having been previously marked  
10 for identification as MMB  
11 Exhibit No. 15, was received  
12 into evidence.)

13 BY MR. HALL:

14 Q Mr. Hicks, you had mentioned that you raised the  
15 issue of getting your legal counsel, Mr. Brown, involved; is  
16 that correct?

17 A I mentioned that to Mr. Dille, yes.

18 Q Do you recall if you did that?

19 A Yes, I did.

20 Q Do you recall when it was that you contacted Mr.  
21 Brown to let him know about this potential deal?

22 A I had a lot of conversations with Rick Brown. He  
23 was acting as my legal counsel, and he was also a friend, a  
24 social friend, so there was a lot of conversation with Rick  
25 Brown, and I'm not really sure of the exact time that the

1 subject was mentioned to him. But there was a time that we  
2 did have a lunch date when I informed him of more of the  
3 details that I knew about the deal.

4 Q You believe it was after the September 2nd meeting  
5 with Mr. Dille?

6 A That's correct.

7 Q Was it some time in September?

8 A It was some time in September. I think it was the  
9 latter part of September.

10 Q Before you met with Mr. Brown, did you have any  
11 further discussions with Mr. Dille where the issue of WRBR  
12 came up?

13 A I'm not -- I'm not certain that we had any  
14 meetings. I think we had telephone conversations, but how  
15 many and when I really have no recollection of.

16 Q You mentioned that Mr. Brown had been representing  
17 you before. How did you first come to know Mr. Brown?

18 A Mr. Brown was introduced to me through an  
19 accountant that I had obtained to put together a business  
20 plan for me when I bought the Battlecreek radio stations.

21 Q And the time frame would be?

22 A That was in the mid-eighties, right.

23 Q Did he represent you in that acquisition?

24 A And he represented me, yes, in that -- in every  
25 acquisition.

1 Q All the acquisitions we've discussed before, the  
2 radio stations, the sale of the Battlecreek, the merger with  
3 Airborne, Mr. Brown was your legal counsel?

4 A That's correct.

5 Q Did he also represent you in the sale or sales of  
6 your Battlecreek stations that didn't get consummated?

7 A There was a period of time that we had an offer  
8 from, a very attractive offer from a broadcaster named  
9 Reagan Henry, and he put -- worked hard on that and he did  
10 all of the documents up to a closing that never occurred.  
11 So he was involved in that, yes.

12 Q Do you recall approximately when that was?

13 A That was in the early eighties.

14 Q So prior to your merger with Airborne Group?

15 A Yes.

16 Q Do you recall was this for the sale of both of  
17 your Battlecreek stations?

18 A It was for the sale of both --

19 Q Of both Battlecreek and Kalamazoo.

20 A The operations from the Battlecreek moved to  
21 Kalamazoo, so we had our operations in Kalamazoo. One was  
22 licensed to Battlecreek and one was licensed to Kalamazoo.

23 Q Do you recall how much you were to receive for the  
24 sale of those stations at that time?

25 A From Mr. Henry?

1 Q Yes.

2 A Yes.

3 Q How much was that?

4 A Eleven million.

5 Q Why was that deal not completed?

6 A He wasn't able to obtain his financing, my  
7 understanding, at the last moment.

8 Q Let's go back to Mr. Brown and the WRBR deal.

9 What was Mr. Brown's role in the RBR transaction?

10 A Well, he had pretty much the role of negotiator,  
11 of document provider, counselor. I turned the whole project  
12 basically over to Mr. Brown.

13 Q Now, I think you mentioned a lunch conference.

14 Do you recall having various meetings and  
15 telephone calls with Mr. Brown regarding this deal?

16 A Well, as I said, I'm sure the subject came up, but  
17 not in great detail until that one lunch meeting when I did  
18 kind of outline the way I understood this possibly could  
19 work.

20 Q Did there come a time when you and Mr. Dille both  
21 met face-to-face with Mr. Brown?

22 A There was, yes.

23 Q Was that before or after this lunch conference you  
24 were mentioning?

25 A That was after.

1           Q     Now, I don't know if it's -- taking these meetings  
2 together -- well, is it possible for you to separate out  
3 what you discussed with Mr. Brown in each of these meetings,  
4 the one you had with at lunch and the one that you had with  
5 him with Mr. Dille, what was discussed at which meeting?

6           A     Is it possible to?

7           Q     For you to remember today what --

8           A     I think the first initial meeting with Mr. Brown  
9 was more or less just my idea of a sketch of what this deal  
10 might be and what it's kind of all about; more or less  
11 bringing him up to speed as I knew it at that point.

12          Q     What about the subject of the meeting between  
13 yourself and Mr. Dille and Mr. Brown, how did that --

14          A     I think that was a more detailed meeting because  
15 Mr. Dille obviously knew more about the details of the deal  
16 than I did, and he was in a good position to relay those to  
17 Mr. Brown.

18          Q     Do you recall when you were first in contact with  
19 Mr. Brown whether you were already in possession of any of  
20 the deal documents or any other materials from Mr. Booth  
21 that you provided to Mr. Brown?

22          A     I don't recall that I had anything at that point.

23          Q     Now, when you were discussing -- what did you tell  
24 Mr. Brown either in the lunch conference or in the  
25 subsequent conference with Mr. Dille and Mr. Brown about the

1 WRBR transaction?

2 A Again, I tried to sketch to him from my mind  
3 how -- what this deal was and what it involved, and what  
4 role I would play. I didn't have all of the details that  
5 Mr. Dille had so I was only going from information that I  
6 obtained up to that point from Mr. Dille.

7 Q Well, you said the meeting between yourself and  
8 Mr. Brown and Mr. Dille was a later meeting; is that right,  
9 than the meeting you had by yourself with Mr. Brown?

10 A Yes, the meeting with Mr. Dille and myself and Mr.  
11 Brown followed the meeting that I had with Mr. Dille.

12 Q Let's focus on that matter meeting, the one where  
13 you and Mr. Dille and Mr. Brown all had a meeting.

14 What do you remember being discussed about the  
15 WRBR deal at that meeting?

16 A Well, I think, you know, of course, Rick had known  
17 the basics of the deal by that time, and John kind of filled  
18 in much more detail because he was much more involved and he  
19 had -- he went into discussion about his dealings with John  
20 Booth and how he thought this could be structured along the  
21 same lines that he had negotiated with Mr. Booth. I think  
22 he really, you know, gave a lot more detail than I did.

23 Q Do you remember being discussed at this meeting  
24 anything about the terms, any more detail about the terms of  
25 the deal?

1           A     I think -- I think it was, yes.

2           Q     What specifically did --

3           A     Well, I think he had more of an idea of how the  
4     structure was by then than he did when he talked to me. I  
5     mean, he remembered. He probably had gone back and found  
6     out the payment structure he had set up and that sort of  
7     thing.

8           Q     Do you remember any discussion concerning the  
9     joint sales agreement?

10          A     Yes.

11          Q     What do you remember about that?

12          A     And I think he was briefing Rick a little better  
13     than I could on the joint sales agreement; talked about the  
14     changes in the industry; kind bring Rick up to speed also on  
15     the new consolidations and things that were hopefully coming  
16     down the road, and new ways to operate radio. Rick was very  
17     knowledgeable, but he wasn't totally up to speed as -- none  
18     of us really were at that time.

19          Q     Was there any discussion at this meeting or was  
20     the issue of having the children involved as minority  
21     members discussed with Mr. Brown?

22          A     I believe it was.

23          Q     Was there any discussion at this point or mention  
24     of the possible option for them to -- as minority members to  
25     buy out your interest as the majority member at some point

1 down the road?

2 A Here again, I think in the discussion it was  
3 mentioned as a -- on the wish list or a possibility that  
4 maybe down the road. Obviously, if his children were  
5 looking for an investment, maybe there is some opportunity  
6 to buy the radio station, but it was just brought out as a,  
7 as an idea.

8 Q By the conclusion of this later meeting between  
9 yourself and Mr. Brown and Mr. Dille, was there any  
10 agreement between you and Mr. Dille about whether or not  
11 there would be an option for his children to purchase your  
12 interest at some point down the road?

13 A No, there was not.

14 Q Was there any discussion at this meeting regarding  
15 the source of Mr. Dille's children's funds for the WRBR  
16 transaction?

17 A No.

18 Q Did you or Mr. Brown make any inquiry about this  
19 with Mr. Dille?

20 A No.

21 Q Was there any inquiry made of you by Mr. Dille  
22 concerning your financial condition and capability?

23 A No.

24 Q After the meeting you had with yourself and Mr.  
25 Brown, and then with Mr. Dille and Mr. Brown, at some point



1 did Mr. Brown start negotiating with Mr. Booth's counsel on  
2 the terms of the agreement?

3 A I believe at that point that that's where that  
4 started, yes.

5 Q Did you personally get involved in the  
6 negotiations with Mr. Booth or his counsel?

7 A No, I did not.

8 Q Do you know in what fashion these negotiations  
9 were conduct? Was it face to face, your exchange of mail,  
10 anything like that?

11 A Well, I really don't know how attorneys work. I  
12 know that Pearson Ball, or not -- Miller Canfield has  
13 offices in the Detroit area, and John Booth's attorneys were  
14 located in the Detroit area. Now, whether they worked at  
15 that office or whether they worked in Kalamazoo, I really  
16 don't know how that procedure was.

17 Q Well, what was your role during this negotiation  
18 process?

19 A I was kept advised by Rick Brown as the various  
20 documents came in. This was forming the asset purchase  
21 agreement, and I had given him the go ahead to at least  
22 begin to collect those and to start the process.

23 Q Do you remember seeing drafts of relevant  
24 documents?

25 A I didn't really get into the drafts, no.

1 Q Were they sent to you by Mr. Brown at least?

2 A I think -- maybe a couple of occasions he might  
3 have made notes or something and sent on the draft and have  
4 sent me pages or so, but that was not that much that I  
5 really recall.

6 Q Do you recall Mr. Brown raising with you any  
7 particular issues that he thought needed more attention in  
8 this process as opposed to things that were more legal  
9 nature, or of a legal nature?

10 A No, I -- I think a couple of times he questioned  
11 if I really wanted to do this because he was -- he's looking  
12 at it from a legal standpoint, and I'm looking at it from a  
13 business standpoint and I think if anybody else looked at it  
14 outside of those two areas, they'd come to the conclusion  
15 this isn't a very good radio station. Why are -- why are  
16 you doing this?

17 But I mean, I -- I was very aware that we had a  
18 lot of changes in the industry coming and I was banking on  
19 the fact that that's the way -- that's why these change were  
20 coming about from the Commission, to help stations exactly  
21 like this get their feet on the ground.

22 So Rick was having a hard time understanding that.

23 Q What sort of changes are you referring to when you  
24 talk about changes?

25 A Well, the whole consolidation and the new ways of

1 operating, the joint ventures. It was really evidence of  
2 what I was hearing then that was coming about.

3 Like I said earlier, I had two AM radio stations  
4 in adjacent markets that I back in the eighties couldn't  
5 own. I mean, that was -- today you can have as many as you  
6 want. I mean, it's just ridiculous. But -- and those are  
7 the changes that's happened, and they were all beginning to  
8 happen at about that time frame. So it was new to all of  
9 us.

10 Q Now, eventually there was an asset purchase  
11 agreement that was signed between yourself on behalf of  
12 Hicks Broadcasting of Indiana and Mr. Booth; is that right?

13 A That's correct.

14 Q Do you recall when it was, approximately, the  
15 asset purchase agreement was signed?

16 A Oh, that would have been probably in December '93.

17 Q Between the meetings you had with Mr. Brown, and  
18 with Mr. Brown and Mr. Dille in September, and the time that  
19 the asset purchase agreement was signed, did you and Mr.  
20 Dille have any further discussions on the issue of whether  
21 the children had an option to buy out your interest at some  
22 point down the road?

23 A No, we did not.

24 Q Now, during this -- by the time that the asset  
25 purchase agreement was signed, I assume you at some point

1 reviewed some financial information about WRBR?

2 A Yes. It was still sketchy, but it was better than  
3 I had had to begin with. I looked at it as kind of  
4 meaningless because there was -- there was some revenue  
5 there so that wasn't like a start-up radio station. I mean,  
6 if you had \$10.00, at least you were at 10 more than you  
7 had, but there was some revenue there, so I knew that, but  
8 it didn't really have a picture because it was very expense  
9 loaded from the Booth standpoint, and I knew that those had  
10 to be cut immediately, and I knew even without rules changes  
11 there would -- you know, that there would be many things you  
12 could cut.

13 Q What sort of things are you referring to?

14 A Well, just an abundance of staff for one thing. I  
15 mean, they just had everybody, too much staff for what the  
16 station could sustain.

17 Q What thoughts did you have for addressing that  
18 issue?

19 A Automation was one of the issues. The joint sales  
20 agreement abled us to put together a sale staff in  
21 combination with one another, so that would take care of,  
22 you know, a good portion of them; five or six right there.  
23 Traffic areas, we didn't need, you know, three traffic  
24 directors or whatever. If we got to the point where we  
25 consolidated the facilities, then we're looking at

1 receptionists and other clerical, you know, areas that could  
2 be combined.

3 So right away that was kind of a meaningless -- it  
4 wasn't anything to have any guidelines from other than the  
5 revenue side.

6 Q Now, you mentioned automation which, I think, is  
7 probably the first time it's come up in the hearing.

8 Could you describe what you mean when you refer to  
9 automation on that context?

10 A Well, automation has changed also considerably  
11 since those times, but it means that you can set up a radio  
12 station to run on a computer, so you don't have to have  
13 people there to run, so it plays the music and runs the  
14 commercials and it gives the time breaks, and inserts the  
15 news all by a computer.

16 Q Takes the place of some of the on-air personality?

17 A That's correct.

18 Q Now, at this point in time where did you envision  
19 the source of the funds would be to make the payments to Mr.  
20 Booth that would ultimately come due?

21 A Well, hopefully the JSA would provide a lot of  
22 those funds. I think we looked at the members possibly  
23 having to make a contribution, but that was no unknown at  
24 that point. If we could get that thing up and running and  
25 come off the ground running, you know, it might have been a

1 very limited contribution.

2 Q I believe you mentioned earlier that at least at  
3 some point you were told that the way it was structured  
4 would be there would be no payments to Booth for the first  
5 six months after the closing.

6 Is that how it -- is that the way it was  
7 structured?

8 A That's correct.

9 Q What were the next -- at some point payments began  
10 coming due. Were they especially large initially?

11 A No, they -- they actually -- I think that was a  
12 sizeable one, and then I think they decreased for a period  
13 of time. For a period of time there wasn't any, and then we  
14 had a balloon at the end.

15 Q And you mentioned that might have been in your  
16 mind the possibility that members would have to make  
17 payments.

18 In that context, at any time prior to entering  
19 into the asset purchase agreement did you investigate the  
20 financial condition of Mr. Dille's children?

21 A No, I did not.

22 Q Why didn't you do that?

23 A I was -- I was never asked for my financial  
24 information. I did not ask for the Dille financial  
25 information because I didn't feel it necessary. It's a very

1 prominent family. I knew they were involved in a lot of  
2 things. I knew the children were involved in various  
3 things. I just didn't feel it was really my concern.

4 Q Did you have an agreement with Mr. Dille at this  
5 point in time that he would make good for his children's  
6 portions of the payment in any way?

7 A No.

8 Q Did you understand that he would do so whether or  
9 not you had an agreement with him that you believed --

10 A That was never discussed, no.

11 Q Was that what you believed to be the case, whether  
12 or not it was discussed with you, he would make those  
13 payments?

14 A I -- I didn't know where the source of the income  
15 was for the Dille family no more than he knew where mine  
16 was.

17 Q Did you have a -- at some point during the asset  
18 purchase agreement process, you were required to put up a  
19 letter of credit as part of an escrow agreement; is that  
20 correct?

21 A That's correct.

22 Q And I think eventually the testimony is that there  
23 was a guarantee, personal guarantee associated with the  
24 asset purchase agreement.

25 Do you remember that?

1           A     I do.

2           Q     Now, do you recall -- did you ever have an  
3     agreement with Mr. Dille that he would indemnify you in any  
4     way from any losses you might suffer on either the letter of  
5     credit or the guarantee?

6           A     I don't recall ever talking to Mr. Dille about  
7     indemnifying me, no.

8           Q     Would you turn to Mass Media Bureau Exhibit 36,  
9     please? It should be in Volume 2.

10                  Do you have that document in front of you, Mr.  
11     Hicks?

12           A     I have it, yes.

13           Q     And you're one up on me because my Exhibit 36 has  
14     been migrated from my reporter, but I believe I have another  
15     copy here.

16                  Mr. Hicks, you were in court when Mr. Brown was  
17     asked about this memorandum. Prior to this hearing process,  
18     had you ever seen this document before?

19           A     No.

20           Q     Would you read to yourself the first sentence of  
21     the first paragraph of the document?

22           A     Yes.

23           Q     In that sentence it says that "we," being Mr.  
24     Brown's firm, were advised by you, Mr. Hicks, that Mr.  
25     Dille, and I'm paraphrasing here up to this point, has



1       agreed to "hold him harmless with regard to any lawsuit  
2       which might occur as a result of the letter of credit or  
3       guarantee."

4               Do you recall ever telling Mr. Brown anything of  
5       that sort?

6           A     I really -- really have no recollection of ever  
7       talking to Mr. Brown about that.

8           Q     Are those words "hold him harmless," are those  
9       kinds of words you would use in a conversation with Mr.  
10      Brown?

11          A     No, I might have said, if I had said something,  
12      like this is not a problem to me or nothing to worry about,  
13      but I don't believe that I use words like "hold harmless" or  
14      "indemnification" or anything like that. Those aren't my  
15      words.

16          Q     Did you ever have a conversation with Mr. Dille  
17      along the lines of what's described in the first sentence of  
18      the first paragraph?

19          A     I don't recall ever having a conversation like  
20      that with Mr. Dille.

21          Q     Do you have any recollection of having any  
22      agreement with Mr. Dille along the lines which are described  
23      in this exhibit?

24          A     No, I don't.

25          Q     Hicks, in connection with the WRBR transaction,

1 did there come a time when an assignment application was  
2 filed on behalf of Hicks Broadcasting of Indiana with the  
3 FCC?

4 A Yes.

5 Q And who was responsible primarily on behalf of  
6 Hicks Broadcasting of Indiana for completing that form?

7 A I was.

8 Q Did you also at this point have FCC counsel in  
9 connection with the WRBR transaction?

10 A I did.

11 Q Who was that counsel?

12 A That was Alan Campbell.

13 Q Had you used Mr. Campbell as FCC counsel in any of  
14 your previous deals?

15 A No, I had not.

16 Q Who had you used before?

17 A My long-time Washington counsel was William Green  
18 at Pearson, Ball and Dobb.

19 Q And why didn't you use Mr. Green in this deal?

20 A Mr. Green has retired from active practice.

21 Q Why did you hire Mr. Campbell?

22 A I hired Mr. Campbell primarily because he had  
23 knowledge -- my understanding was that he had knowledge in  
24 the past of this deal with Mr. Booth and Mr. Dille, and he's  
25 the one that had advised John Dille, and had spoken to

1 Booth's counsel regarding -- regarding this whole joint  
2 sales agreement and some of the other aspects of putting  
3 these two radio stations together in an operating program  
4 with the FCC, at least giving advice that was blessed by  
5 them over the FCC rules. I don't know if I made myself  
6 clear on that, but that's the reason I hired Alan Campbell  
7 was because he had the knowledge of this and was very, very  
8 aware of the deal.

9 Q And what was he source of your knowledge that Mr.  
10 Campbell had -- himself had knowledge about --

11 A Well, I was told that.

12 Q By who?

13 A By Mr. Dille.

14 Q Would you turn to Exhibit 37 in the same volume  
15 that we're just looking at, Mass Media Bureau Volume 2,  
16 hopefully it's in my volume as well. Ah, here it is. It's  
17 a multiple page document, Mr. Hicks, so take your time and  
18 look through it make sure that you've looked through it all.

19 (Witness reviews document.)

20 A Yes, I have.

21 Q Looking at the first page of this exhibit, can you  
22 tell me what that page represents?

23 A This is a facsimile cover sheet sent to Alan  
24 Campbell by myself with the attachments of a rough draft of  
25 Form 314, Application for Assignment of Broadcast License.

1 Q Is the remainder of this exhibit the rough draft  
2 referred to on the cover sheet?

3 A Yes, it is.

4 Q Now, there is quite a bit of check marks and some  
5 handwriting on the remainder of the pages in the exhibit.

6 Is that your handwriting, Mr. Hicks?

7 A This is my handwriting, yes.

8 Q This is a first draft, if you will, of the  
9 assignment application?

10 A I believe I received the blank pages from Alan  
11 Campbell, and this is my first draft of this, yes.

12 Q Did you consult with anyone before completing this  
13 version of the assignment application?

14 A No, I did not.

15 Q If you could turn to the Hicks volume, Exhibit 2,  
16 that's the small volume. Again, it's another multiple page  
17 document, so if you can take a look at it and let me know if  
18 you've seen it before.

19 A What exhibit would that be?

20 Q I'm sorry. Exhibit 2.

21 A I don't think we have the right one.

22 Okay.

23 Q Just to make sure we're all on the same page, what  
24 is the first page of that exhibit, Mr. Hicks? Is that a  
25 December 17, 1993, letter from Alan Campbell to you?

1 A That's correct.

2 Q Would you look through the rest of the exhibit and  
3 tell me if you're familiar with it?

4 (Witness reviews document.)

5 A Well, there is a -- there is actually two letters  
6 in there. There is one on the 17th and one on the 20th, but  
7 the first part of it looks like it's completed form from  
8 Alan Campbell on the application for license transfer.

9 Q And would that be running from pages -- if you  
10 look at the bottom right-hand corner of the exhibit --  
11 running -- the December 17 letter would run from page 02  
12 through page 11; is that correct?

13 A Correct.

14 Q And the December 20 letter that you're referring  
15 to, that would be pages 12 through 15 of the exhibit; is  
16 that right?

17 A I guess that would be the exhibits at the end and  
18 that goes through page 15.

19 Q So the letter dated December 20th that begins on  
20 page 12, this is -- were these enclosing exhibits to the  
21 first part of this exhibit?

22 A I believe that's -- I believe that's what he has  
23 indicated.

24 Q Okay. Now, if you look at page 14 of the exhibit,  
25 page 14 on the bottom right-hand corner.

1 A Yes.

2 Q There is some handwriting on that page. Is that  
3 your handwriting?

4 A On page 14?

5 Q Yes, it's part of Exhibit 2, Hicks Broadcasting of  
6 Indiana LLC.

7 A No, that is not mine.

8 Q This is the form you received back from Mr.  
9 Campbell, the application form; is that fair?

10 A Yes.

11 Q This entire document, entire exhibit?

12 A Yes.

13 MR. HALL: Our records, well, my records show,  
14 Your Honor, that this has not yet been made an exhibit or  
15 entered into evidence, so I would move that at this point.

16 JUDGE CHACHKIN: You're talking about Hicks  
17 Exhibit 2?

18 MR. HALL: Yes.

19 JUDGE CHACHKIN: Any objection?

20 MR. SHOOK: No objection.

21 JUDGE CHACHKIN: Hicks Exhibit 2 is received.

22 //

23 //

24 //

25 //

1 (The document referred to,  
2 having been previously marked  
3 for identification as Hicks  
4 Exhibit No. 2, was received  
5 into evidence.)

6 BY MR. HALL:

7 Q Now, if you can turn to Mass Media Volume 1;  
8 specifically, Exhibit 3, and beginning on page 14 of Exhibit  
9 3, do you recognize that document, Mr. Hicks?

10 A Would this be the application for Booth American?

11 Q Well, I was going to ask you what it is.

12 A Well, it says --

13 Q The first page says "Application for Consent for  
14 Assignment of Broadcast Station."

15 Do you see that?

16 A Yes, I do.

17 Q And if you could turn to page 23, is that your  
18 signature on page 23?

19 A That is my signature.

20 Q Do you recognize -- putting aside the exhibits,  
21 just looking at the exhibit itself that goes from page 14  
22 through 24, do you recognize that document?

23 A Yes.

24 Q What is it?

25 A It is the Application for Assignment of Broadcast